



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN, TEXAS 78711**

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November 21, 1973

The Honorable W. D. "Chris" Chrisner  
Chairman, Performance Certification  
Board for Mobile Homes  
Box 12157, Capitol Station  
Austin, Texas 78711

Opinion No. H- 154

Re: Can the Department  
expend all of the money  
raised by fees set by  
the Board and related  
questions

Dear Mr. Chrisner:

According to your letter requesting our opinion, the Performance Certification Board for Mobile Homes, pursuant to the Texas Mobile Homes Standards Act (Article 5221f, Vernon's Texas Civil Statutes, as amended, Acts 1971, 62nd Leg., ch. 896, p. 2765), adopted a schedule of fees sufficient to pay the costs incurred in the enforcement of the Act. Nevertheless, the 63rd Legislature in its Appropriations Act for 1974 and 1975 (House Bill 139) appropriated an amount for this work less than the income that will be available.

You ask:

"Can the department expend all of the money  
raised by fees set by the Board?"

Article 5221f, V. T. C. S., (hereafter "the Act") provides generally for the establishment of standards for the manufacture of mobile homes and their enforcement by a Performance Certification Board. It authorizes the Bureau of Labor Statistics to issue a certificate of acceptability to mobile home manufacturers.

Section 8 empowers the Bureau to inspect mobile homes at the place of manufacture and it is authorized by §10 to have its inspectors travel within or without this state for purposes connected with the Act.

Section 11 of the Act provides in part:

"(a) The board [Performance Certification Board] with the advice of the department [of Labor Statistics] shall establish a schedule of fees to pay the cost incurred by the department for the work relating to the administration and enforcement of this Act . . .

. . .

"(d) All fees shall be paid to the state treasury and placed in a special account for the use of the department in the administration and enforcement of this Act."

The Appropriations Act for fiscal 1974 and 1975, *supra*, at p. III-95 makes a specific appropriation for administration of the Mobile Home Standards Act to be financed from "Texas Mobile Homes Standards Fund No. 82".

The Constitution of Texas in § 6 of Article 8, provides:

"No money shall be drawn from the Treasury but in pursuance of specific appropriations made by law . . . "

A distinction may be made between funds deposited in the Treasury and those paid to the Treasurer, a deposit of the latter type being subject to the construction that it constitutes the Treasurer a trustee who may pay the funds to the person entitled to them without specific appropriation. Manion v. Lockhart, 114 S. W. 2d 216 (Tex. 1938); Friedman v. American Surety Co. of N. Y., 151 S. W. 2d 570 (Tex. 1941)

However, there is nothing about the fees collected under the Act to indicate that they are to be held in trust, and it is our opinion that they may not be withdrawn from the Treasury without a specific appropriation. Compare Attorney General Letter Opinions No. MS-13 (1953) and Attorney General Opinions WW-442 (1958) and H-138 (1973).

We are not unmindful of those decisions holding that where, in a general statute, funds are appropriated, it is unnecessary that they be appropriated in the Appropriations Act. Pickle v. Finley, 44 S. W. 480 (Tex. 1898); National Biscuit Company v. State of Texas, 135 S. W. 2d 687 (Tex. 1940). In the last cited case the Supreme Court said:

" . . . An appropriation can be made for all funds coming from certain sources and deposited in a special fund for a designated purpose. In such instances, it is not necessary for the appropriating Act to name a certain or even a maximum sum . . . " (135 S. W. 2d at 693)

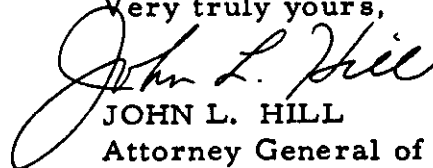
However, we are unable to find in Article 5221f, V.T.C.S., any language of appropriation. The language of § 11(d), which we have quoted above, does no more than to "earmark" the funds for the particular purpose; compare Attorney General Letter Advisory No. 46 (1973). Furthermore, a statutory appropriation may be valid for no more than two years. Article 8, § 6 of the Constitution of Texas; Attorney General Letter Advisory No. 46 (1973) and cases there cited.

We are of the opinion, therefore, that your question should be answered: That the Department may not expend unappropriated money raised by fees set by the Board; it is limited to the amount appropriated by the Legislature.

#### S U M M A R Y

Even though the fees paid into the Treasury pursuant to the Texas Mobile Homes Standards Act may exceed the amount appropriated by the Legislature for expenses of enforcing the Act, the Board of Labor Statistics is limited to the amount so appropriated and may not expend unappropriated funds for that purpose.

Very truly yours,

  
JOHN L. HILL  
Attorney General of Texas

APPROVED:

  
LARRY F. YORK, First Assistant

  
DAVID M. KENDALL, Chairman  
Opinion Committee